



House of Representatives

General Assembly

File No. 436

February Session, 2018

Substitute House Bill No. 5289

House of Representatives, April 12, 2018

The Committee on Public Health reported through REP. STEINBERG of the 136th Dist., Chairperson of the Committee on the part of the House, that the substitute bill ought to pass.

AN ACT CONCERNING THE DEPARTMENT OF PUBLIC HEALTH'S RECOMMENDATIONS REGARDING THE CLEAN INDOOR AIR ACT.

Be it enacted by the Senate and House of Representatives in General Assembly convened:

1 Section 1. Section 19a-342 of the 2018 supplement to the general
2 statutes is repealed and the following is substituted in lieu thereof
3 (*Effective October 1, 2018*):

4 (a) As used in this section: ["smoke"]

5 (1) "Smoke" or "smoking" means the lighting or carrying of a lighted
6 cigarette, cigar, pipe or similar device;

7 (2) "Any area" means the interior of the facility, building or
8 establishment and the outside area within twenty-five feet of any
9 doorway, operable window or air intake vent of the facility, building
10 or establishment.

11 (b) (1) Notwithstanding the provisions of section 31-40q, as
12 amended by this act, no person shall smoke: (A) In any area of a

13 building or portion of a building owned and operated or leased and
14 operated by the state or any political subdivision thereof; (B) in any
15 area of a health care institution; (C) in any area of a retail [food store]
16 establishment accessed by the general public; (D) in any restaurant; (E)
17 in any area of an establishment with a permit issued for the sale of
18 alcoholic liquor pursuant to section 30-20a, 30-21, 30-21b, 30-22, 30-22c,
19 30-28, 30-28a, 30-33a, 30-33b, 30-35a, 30-37a, 30-37e or 30-37f, in any
20 area of an establishment with a permit for the sale of alcoholic liquor
21 pursuant to section 30-23 issued after May 1, 2003, and, on and after
22 April 1, 2004, in any area of an establishment with a permit issued for
23 the sale of alcoholic liquor pursuant to section 30-22a or 30-26 or the
24 bar area of a bowling establishment holding a permit pursuant to
25 subsection (a) of section 30-37c; (F) [within] in any area of a school
26 building [while school is in session or student activities are being
27 conducted] or on school property; (G) in any passenger elevator,
28 provided no person shall be arrested for violating this subsection
29 unless there is posted in such elevator a sign which indicates that
30 smoking is prohibited by state law; (H) in any area of a dormitory in
31 any public or private institution of higher education; [or] (I) on and
32 after April 1, 2004, in any area of a dog race track or a facility equipped
33 with screens for the simulcasting of off-track betting race programs or
34 jai alai games; or (J) any public housing project, as defined in
35 subsection (b) of section 21a-278a, constructed on or after October 1,
36 2018. For purposes of this subsection, "restaurant" means space, in a
37 suitable and permanent building, kept, used, maintained, advertised
38 and held out to the public to be a place where meals are regularly
39 served to the public.

40 (2) [This section] Subdivision (1) of this subsection shall not apply to
41 [(A) correctional facilities; (B) designated smoking areas in psychiatric
42 facilities; (C) public] the following establishments: (A) Public housing
43 projects, as defined in subsection (b) of section 21a-278a, constructed
44 prior to October 1, 2018; [(D)] (B) any classroom where demonstration
45 smoking is taking place as part of a medical or scientific experiment or
46 lesson; [(E) smoking rooms provided by employers for employees,
47 pursuant to section 31-40q; (F) notwithstanding the provisions of

48 subparagraph (E) of subdivision (1) of this subsection, the outdoor
49 portion of the premises of any permittee listed in subparagraph (E) of
50 subdivision (1) of this subsection, provided, in the case of any seating
51 area maintained for the service of food, at least seventy-five per cent of
52 the outdoor seating capacity is an area in which smoking is prohibited
53 and which is clearly designated with written signage as a nonsmoking
54 area, except that any temporary seating area established for special
55 events and not used on a regular basis shall not be subject to the
56 smoking prohibition or signage requirements of this subparagraph;
57 (G)] (C) any medical research site where smoking is integral to the
58 research being conducted; or [(H)] (D) any tobacco bar or tobacco
59 specialist, provided no tobacco bar shall expand in size or change its
60 location from its size or location as of December 31, 2002. For purposes
61 of this subdivision, ["outdoor" means an area which has no roof or
62 other ceiling enclosure,] "tobacco bar" means an establishment with a
63 permit for the sale of alcoholic liquor to consumers issued pursuant to
64 chapter 545 that, in the calendar year ending December 31, 2002,
65 generated ten per cent or more of its total annual gross income from
66 the on-site sale of tobacco products and the rental of on-site humidors,
67 "tobacco specialist" means an establishment engaged in the sale of
68 tobacco products that generates at least seventy-five per cent of its
69 annual gross income from the on-site sale of tobacco products and the
70 rental of on-site humidors, and "tobacco product" means any substance
71 that contains tobacco, including, but not limited to, cigarettes, cigars,
72 pipe tobacco or chewing tobacco.

73 (3) Any public housing project, as defined in subsection (b) of
74 section 21a-278a, or landlord of a tenement house may include a
75 provision in the rental agreement between the landlord and tenant of
76 the housing project or tenement house to prohibit smoking in the
77 dwelling unit of the housing project or tenement house. For purposes
78 of this subdivision, "dwelling unit", "landlord", "rental agreement",
79 "tenant" and "tenement house" have the same meaning as provided in
80 section 47a-1.

81 [(c) The operator of a hotel, motel or similar lodging may allow

82 guests to smoke in not more than twenty-five per cent of the rooms
83 offered as accommodations to guests.]

84 [(d)] (c) In each room, elevator, area or building in which smoking is
85 prohibited by this section, the person in control of the premises shall
86 post or cause to be posted in a conspicuous place signs stating that
87 smoking is prohibited by state law. Such signs, except in elevators,
88 restaurants, establishments with permits to sell alcoholic liquor to
89 consumers issued pursuant to chapter 545, hotels, motels or similar
90 lodgings, and health care institutions, shall have letters at least four
91 inches high with the principal strokes of letters not less than one-half
92 inch wide.

93 [(e)] (d) Any person found guilty of smoking in violation of this
94 section, failure to post signs as required by this section or the
95 unauthorized removal of such signs shall have committed an
96 infraction. Nothing in this section shall be construed to require the
97 person in control of a building to post such signs in every room of a
98 building, provided such signs are posted in a conspicuous place in
99 such building.

100 [(f)] (e) Nothing in this section shall be construed to require any
101 smoking area [in] inside or outside any building or the entryway to
102 any building.

103 [(g)] (f) The provisions of this section shall supersede and preempt
104 the provisions of any municipal law or ordinance relative to smoking
105 effective prior to, on or after October 1, 1993.

106 Sec. 2. Section 19a-342a of the 2018 supplement to the general
107 statutes is repealed and the following is substituted in lieu thereof
108 (*Effective October 1, 2018*):

109 (a) As used in this section and section 2 of public act 15-206:

110 (1) "Any area" means the interior of the facility, building or
111 establishment and the outside area within twenty-five feet of any
112 doorway, operable window or air intake vent of the facility, building

113 or establishment;

114 [(1)] (2) "Child care facility" means a provider of child care services
115 as defined in section 19a-77, or a person or entity required to be
116 licensed under section 17a-145;

117 [(2)] (3) "Electronic nicotine delivery system" means an electronic
118 device that may be used to simulate smoking in the delivery of
119 nicotine or other substances to a person inhaling from the device, and
120 includes, but is not limited to, an electronic cigarette, electronic cigar,
121 electronic cigarillo, electronic pipe or electronic hookah and any
122 related device and any cartridge or other component of such device;

123 [(3)] (4) "Liquid nicotine container" means a container that holds a
124 liquid substance containing nicotine that is sold, marketed or intended
125 for use in an electronic nicotine delivery system or vapor product,
126 except "liquid nicotine container" does not include such a container
127 that is prefilled and sealed by the manufacturer and not intended to be
128 opened by the consumer; and

129 [(4)] (5) "Vapor product" means any product that employs a heating
130 element, power source, electronic circuit or other electronic, chemical
131 or mechanical means, regardless of shape or size, to produce a vapor
132 that may or may not include nicotine, that is inhaled by the user of
133 such product, but shall not include a medicinal or therapeutic product
134 used by a (A) licensed health care provider to treat a patient in a health
135 care setting, or (B) a patient, as prescribed or directed by a licensed
136 health care provider in any setting.

137 (b) (1) No person shall use an electronic nicotine delivery system or
138 vapor product: (A) In any area of a building or portion of a building
139 owned and operated or leased and operated by the state or any
140 political subdivision thereof; (B) in any area of a health care institution;
141 (C) in any area of a retail [food store] establishment accessed by the
142 public; (D) in any restaurant; (E) in any area of an establishment with a
143 permit issued for the sale of alcoholic liquor pursuant to section 30-20a,
144 30-21, 30-21b, 30-22, 30-22a, 30-22c, 30-26, 30-28, 30-28a, 30-33a, 30-33b,

145 30-35a, 30-37a, 30-37e or 30-37f, in any area of establishment with a
146 permit issued for the sale of alcoholic liquor pursuant to section 30-23
147 issued after May 1, 2003, or the bar area of a bowling establishment
148 holding a permit pursuant to subsection (a) of section 30-37c; (F)
149 [within] in any area of a school building [while school is in session or
150 student activities are being conducted] or on any school property; (G)
151 within a child care facility, except, if the child care facility is a family
152 child care home as defined in section 19a-77, such use is prohibited
153 only when a child enrolled in such home is present; (H) in any
154 passenger elevator; [provided no person shall be arrested for
155 violating this subsection unless there is posted in such elevator a sign
156 which indicates that such use is prohibited by state law;] (I) in any area
157 of a dormitory in any public or private institution of higher education;
158 [or] (J) in any area of a dog race track or a facility equipped with
159 screens for the simulcasting of off-track betting race programs or jai
160 alai games; or (K) any public housing project, as defined in subsection
161 (b) of section 21a-278a, constructed on or after October 1, 2018. For
162 purposes of this subsection, "restaurant" means space, in a suitable and
163 permanent building, kept, used, maintained, advertised and held out
164 to the public to be a place where meals are regularly served to the
165 public.

166 (2) [This section] Subdivision (1) of this subsection shall not apply to
167 [(A) correctional facilities; (B) designated smoking areas in psychiatric
168 facilities; (C) public] the following establishments: (A) Public housing
169 projects, as defined in subsection (b) of section 21a-278a, constructed
170 prior to October 1, 2018; [(D)] (B) any classroom where a
171 demonstration of the use of an electronic nicotine delivery system or
172 vapor product is taking place as part of a medical or scientific
173 experiment or lesson; [(E)] (C) any medical research site where the use
174 of an electronic nicotine delivery system or vapor product is integral to
175 the research being conducted; [(F) establishments] (D) any
176 establishment without a permit for the sale of alcoholic liquor that
177 [sell] sells electronic nicotine delivery systems, vapor products or
178 liquid nicotine containers on-site and [allow] allows their customers to
179 use such systems, products or containers on-site; [(G) smoking rooms

180 provided by employers for employees, pursuant to section 31-40q; (H)
181 notwithstanding the provisions of subparagraph (E) of subdivision (1)
182 of this subsection, the outdoor portion of the premises of any permittee
183 listed in subparagraph (E) of subdivision (1) of this subsection,
184 provided, in the case of any seating area maintained for the service of
185 food, at least seventy-five per cent of the outdoor seating capacity is an
186 area in which smoking is prohibited and which is clearly designated
187 with written signage as a nonsmoking area, except that any temporary
188 seating area established for special events and not used on a regular
189 basis shall not be subject to the prohibition on the use of an electronic
190 nicotine delivery system or vapor product or the signage requirements
191 of this subparagraph; or (I) or (E) any tobacco bar, provided no
192 tobacco bar shall expand in size or change its location from its size or
193 location as of October 1, 2015. For purposes of this subdivision,
194 ["outdoor" means an area which has no roof or other ceiling enclosure,]
195 "tobacco bar" means an establishment with a permit for the sale of
196 alcoholic liquor to consumers issued pursuant to chapter 545 that, in
197 the calendar year ending December 31, 2015, generated ten per cent or
198 more of its total annual gross income from the on-site sale of tobacco
199 products and the rental of on-site humidors, and "tobacco product"
200 means any substance that contains tobacco, including, but not limited
201 to, cigarettes, cigars, pipe tobacco or chewing tobacco.

202 (3) Any public housing project, as defined in subsection (b) of
203 section 21a-278, or landlord of a tenement house may include a
204 provision in the rental agreement between the landlord and tenant of
205 the housing project or tenement house to prohibit the use of electronic
206 nicotine delivery systems or vapor products in the dwelling unit of the
207 housing project or tenement house. For purposes of this subdivision,
208 "dwelling unit", "landlord", "rental agreement", "tenant" and "tenement
209 house" have the same meaning as provided in section 47a-1.

210 [(c) The operator of a hotel, motel or similar lodging may allow
211 guests to use an electronic nicotine delivery system or vapor product
212 in not more than twenty-five per cent of the rooms offered as
213 accommodations to guests.]

214 [(d)] (c) In each room, elevator, area or building in which the use of
215 an electronic nicotine delivery system or vapor product is prohibited
216 by this section, the person in control of the premises shall post or cause
217 to be posted in a conspicuous place signs stating that such use is
218 prohibited by state law. Such signs, except in elevators, restaurants,
219 establishments with permits to sell alcoholic liquor to consumers
220 issued pursuant to chapter 545, hotels, motels or similar lodgings, and
221 health care institutions, shall have letters at least four inches high with
222 the principal strokes of letters not less than one-half inch wide.

223 [(e)] (d) Any person found guilty of using an electronic nicotine
224 delivery system or vapor product in violation of this section, failure to
225 post signs as required by this section or the unauthorized removal of
226 such signs shall have committed an infraction. Nothing in this
227 subsection shall be construed to require the person in control of a
228 building to post such signs in every room of a building, provided such
229 signs are posted in a conspicuous place in such building.

230 [(f)] (e) Nothing in this section shall be construed to require the
231 designation of any area for the use of electronic nicotine delivery
232 system or vapor product [in] inside or outside any building or the
233 entryway to any building or on any property.

234 [(g)] (f) The provisions of this section shall supersede and preempt
235 the provisions of any municipal law or ordinance relative to the use of
236 an electronic nicotine delivery system or vapor product effective prior
237 to, on or after October 1, 2015.

238 Sec. 3. Section 31-40q of the 2018 supplement to the general statutes
239 is repealed and the following is substituted in lieu thereof (*Effective*
240 *October 1, 2018*):

241 (a) As used in this section:

242 (1) "Person" means one or more individuals, partnerships,
243 associations, corporations, limited liability companies, business trusts,
244 legal representatives or any organized group of persons.

245 (2) "Employer" means a person engaged in business who has
246 employees, including the state and any political subdivision thereof.

247 (3) "Employee" means any person engaged in service to an employer
248 in the business of his employer.

249 (4) "Business facility" means a structurally enclosed location or
250 portion thereof at which employees perform services for their
251 employer. The term "business facility" does not include: (A) Facilities
252 listed in subparagraph (A) [(C) or (H)] or (D) of subdivision (2) of
253 subsection (b) of section 19a-342, as amended by this act, or
254 subparagraph (D) of subdivision (2) of subsection (b) of section 19a-
255 342a, as amended by this act; (B) any establishment with a permit for
256 the sale of alcoholic liquor pursuant to section 30-23 issued on or
257 before May 1, 2003; (C) for any business that is engaged in the testing
258 or development of tobacco or tobacco products, the areas of such
259 business designated for such testing or development; or (D) during the
260 period from October 1, 2003, to April 1, 2004, establishments with a
261 permit issued for the sale of alcoholic liquor pursuant to section 30-22a
262 or 30-26 or the bar area of a bowling establishment holding a permit
263 pursuant to subsection (a) of section 30-37c.

264 (5) "Smoking" means the burning of a lighted cigar, cigarette, pipe
265 or any other matter or substance which contains tobacco.

266 (6) "Electronic nicotine delivery system" has the same meaning as
267 provided in section 19a-342a, as amended by this act.

268 (7) "Vapor product" has the same meaning as provided in section
269 19a-342a, as amended by this act.

270 [(b) Each employer with fewer than five employees in a business
271 facility shall establish one or more work areas, sufficient to
272 accommodate nonsmokers who request to utilize such an area, within
273 each business facility under his control, where smoking is prohibited.
274 The employer shall clearly designate the existence and boundaries of
275 each nonsmoking area by posting signs which can be readily seen by

276 employees and visitors. In the areas within the business facility where
277 smoking is permitted, existing physical barriers and ventilation
278 systems shall be used to the extent practicable to minimize the effect of
279 smoking in adjacent nonsmoking areas.]

280 [(c)] (b) (1) Each employer [with five or more employees] shall
281 prohibit smoking and the use of electronic nicotine delivery systems
282 and vapor products in any area of any business facility under said
283 employer's control. [, except that an employer may designate one or
284 more smoking rooms.] For purposes of this subsection, "any area"
285 means the interior of the facility and the outside area within twenty-
286 five feet of any doorway, operable window or air intake vent of the
287 facility.

288 (2) Notwithstanding the provisions of subdivision (1) of this
289 subsection, an employer that is a restaurant may permit smoking and
290 the use of electronic nicotine delivery systems and vapor products in
291 the outside area within twenty-five feet of any doorway, operable
292 window or air intake vent of the restaurant.

293 [(2) Each employer that provides a smoking room pursuant to this
294 subsection shall provide sufficient nonsmoking break rooms for
295 nonsmoking employees.

296 (3) Each smoking room designated by an employer pursuant to this
297 subsection shall meet the following requirements: (A) Air from the
298 smoking room shall be exhausted directly to the outside by an exhaust
299 fan, and no air from such room shall be recirculated to other parts of
300 the building; (B) the employer shall comply with any ventilation
301 standard adopted by (i) the Commissioner of Labor pursuant to
302 chapter 571, (ii) the United States Secretary of Labor under the
303 authority of the Occupational Safety and Health Act of 1970, as from
304 time to time amended, or (iii) the federal Environmental Protection
305 Agency; (C) such room shall be located in a nonwork area, where no
306 employee, as part of his or her work responsibilities, is required to
307 enter, except such work responsibilities shall not include any custodial
308 or maintenance work carried out in the smoking room when it is

309 unoccupied; and (D) such room shall be for the use of employees only.]

310 [(d)] (c) Nothing in this section may be construed to prohibit an
311 employer from designating an entire business facility and the real
312 property on which the business facility is located as a nonsmoking
313 area.

This act shall take effect as follows and shall amend the following sections:		
Section 1	October 1, 2018	19a-342
Sec. 2	October 1, 2018	19a-342a
Sec. 3	October 1, 2018	31-40q

Statement of Legislative Commissioners:

In Section 3(b), subdivision (2) was added for consistency with other provisions of the bill.

PH *Joint Favorable Subst.*

The following Fiscal Impact Statement and Bill Analysis are prepared for the benefit of the members of the General Assembly, solely for purposes of information, summarization and explanation and do not represent the intent of the General Assembly or either chamber thereof for any purpose. In general, fiscal impacts are based upon a variety of informational sources, including the analyst's professional knowledge. Whenever applicable, agency data is consulted as part of the analysis, however final products do not necessarily reflect an assessment from any specific department.

OFA Fiscal Note***State Impact:*** None***Municipal Impact:*** None***Explanation***

This bill, which makes changes to statutes concerning smoking/the use of e-cigarettes/vaping in certain places, is not anticipated to result in a fiscal impact to the state or municipalities.

The Out Years***State Impact:*** None***Municipal Impact:*** None

OLR Bill Analysis**sHB 5289*****AN ACT CONCERNING THE DEPARTMENT OF PUBLIC HEALTH'S RECOMMENDATIONS REGARDING THE CLEAN INDOOR AIR ACT.*****SUMMARY**

This bill makes various changes affecting the regulation of smoking and e-cigarettes (i.e., electronic nicotine delivery systems and vapor products) in certain establishments and public areas. Among other things, it:

1. expands the area where smoking or e-cigarette use is prohibited in certain buildings, facilities, or establishments, to also include the outside area within 25 feet of a doorway, operable window, or air intake vent;
2. extends the prohibition on smoking and e-cigarette use to (a) all school property; (b) any area of a retail establishment accessed by the public; and (c) newly constructed public housing projects;
3. allows public housing project or tenement housing landlords to ban smoking or e-cigarette use in dwelling units by including a provision in a rental agreement;
4. specifies that nothing in the law requires the designation of a smoking or e-cigarette area inside, outside, or in the entryway of a building; and
5. exempts from the smoking ban, "tobacco specialists" (certain businesses that primarily sell tobacco products).

The bill also narrows current law's exemption from the smoking and e-cigarette ban, thereby prohibiting their use in the following

locations: correctional facilities, designated smoking areas in psychiatric facilities, smoking rooms provided by employers, and outdoor portions of places that serve alcohol under certain conditions (e.g., restaurants, cafes, and taverns).

It also eliminates current law's exemption from the smoking and e-cigarette ban for up to 25% of hotel or motel guest rooms. Thus, it appears to allow smoking and e-cigarette use in all guest rooms.

Finally, the bill makes related minor, technical, and conforming changes.

EFFECTIVE DATE: October 1, 2018

§§ 1 & 2 — SMOKING AND E-CIGARETTE USE IN CERTAIN ESTABLISHMENTS AND PUBLIC AREAS

Prohibited Locations

Current law prohibits smoking and e-cigarette use in various locations, such as restaurants, health care institutions, and state or municipal buildings. The bill provides that, for purposes of the smoking and e-cigarette ban, "any area" of a facility, building, or establishment includes the area within 25 feet of a doorway, operable window, or air intake vent, in addition to the premise's interior.

The bill adds to and expands the law's prohibited locations by including:

1. any area of a state or municipally owned, operated, or leased building, instead of only inside the building;
2. all school property, inside or outside, instead of only within a school building while school is in session or during student activities;
3. any area of a retail establishment, rather than just a retail food store, accessed by the public;
4. any area of a higher education dormitory, instead of only inside

it; and

5. public housing projects constructed on or after October 1, 2018.

The bill also allows public housing project or tenement house landlords to include a provision in a rental agreement prohibiting smoking or e-cigarette use.

Exemptions

The bill adds “tobacco specialists” to current law’s exemptions from the ban on smoking in certain locations, which it defines as businesses that sell tobacco products and generate at least 75% of their annual gross income from on-site tobacco product sales and rental of on-site humidors (i.e., humidity controlled boxes or rooms to store cigars, cigarettes, or pipe tobacco).

The bill also narrows the current exemptions, thereby prohibiting smoking and e-cigarette use in the following locations:

1. correctional facilities,
2. designated smoking areas in psychiatric facilities,
3. smoking rooms provided by employers for employees (see section 3 below), and
4. outdoor portions of places that serve alcohol under certain circumstances (see directly below).

Current law allows establishments serving alcohol where smoking and e-cigarette use is generally prohibited to allow their use in outdoor areas. If they choose to do so, they must prohibit their use in at least 75% of outdoor areas where food is served and designate such areas with a sign. But temporary seating areas for special events in these establishments are not subject to the ban or sign requirements.

Existing law, unchanged by the bill, also exempts from the smoking and e-cigarette ban (1) classrooms during smoking or e-cigarette

demonstrations that are part of a medical or scientific experiment or lesson, (2) medical research sites where smoking or e-cigarette use is integral to the research being conducted, and (3) certain tobacco bars.

Signage

By law, the person who controls a building in which smoking and e-cigarette use is prohibited must have a sign posted stating the prohibition. As under existing law's smoking sign requirements, the bill specifies that signs for e-cigarettes are not required to be posted in each room of a building, provided they are posted in conspicuous places.

Current law bans smoking and e-cigarette use in passenger elevators, but prohibits violators from being arrested unless there is a sign posted indicating that it is banned. The bill removes the restriction on arresting such violators of the e-cigarette laws, but not those who use cigarettes in passenger elevators.

§ 3 — EMPLOYEE SMOKING ROOMS

The bill generally bans smoking and e-cigarette use in any area of the workplace, regardless of the number of employees. It applies to both inside the workplace and outside, within 25 feet of a doorway, operable window, or air intake vent. Under current law, an employer:

1. with five or more employees may designate employee smoking rooms, if the employer also designates a sufficient number of non-smoking break rooms and
2. with fewer than five employees must establish non-smoking work areas upon request.

But the bill allows restaurant employers to permit smoking and e-cigarette use anywhere outside.

Additionally, the bill specifies that it does not prohibit an employer from designating as a non-smoking area the real property on which the business facility is located, in addition to the facility itself as allowed

under current law.

COMMITTEE ACTION

Public Health Committee

Joint Favorable Substitute

Yea 25 Nay 1 (03/26/2018)